ATIP ALI

v.

JOSEPHINE DORIS NUNIS & ANOR.

HIGH COURT MALAYA, MALACCA
WAN YAHYA J
[CIVIL SUIT NO. 425 OF 1985]
13 FEBRUARY 1986

CIVIL PROCEDURE**:** *Striking out - Order 18 r. 19 of Rules of the High Court 1980 - Principles to be applied - Whether sustainable cause of action.*

TORT*: Requirements of defamation action - Capacity to sue - Locus standi - Nexus between person defamed and person instituting defamation suit - Words published about person bringing suit - Individual member of group libelled - Reference made in capacity as an individual - Strict procedural rules - Representative proceedings not allowed - Damages only relief claimed - Order of costs under O. 59 r. 8 of Rules of the High Court - Principles.*

On 13 September 1983, the 2nd defendant/applicant, Mr. Karpal Singh, an advocate and solicitor of the High Court of Malaya, filed on behalf of the 1st defendant, a suit in this Court (hereinafter referred to as the "original writ") against Datuk Seri Abdul Rahim Tamby Chik, the Chief Minister of Malacca. It was alleged, *inter alia*, in that suit, that as a result of the relationship between the 1st defendant and the Chief Minister (refer judgment for details of relationship) and the subsequent breaking off of this relationship, the 1st defendant suffered mental anguish and humiliation. An account of this story appeared in the newspaper the following day. The plaintiff in the present suit (hereinafter referred to as the "libel suit") sued the 2nd defendant for defamation of the State Government and UMNO. Four days after the original writ was filed, the 1st defendant discharged her solicitor, the 2nd defendant, and the 1st defendant finally discontinued action before service of the writ on Datuk Seri Abdul Rahim. The 2nd defendant then applied to strike out the libel suit instituted by the plaintiff on the ground that the plaintiff's case is unsustainable on grounds of misappreciation of facts of the original writ, *locus standi* and capacity to sue in defamation action.

Held:

[1] The principle governing an application for striking out under O. 18 r. 19 of the Rules of the High Court 1980 has been succinctly set out by Lord Denning MR in *Drummond-Jackson v. BMA (CA)* [1970] 1 WLR 693 and similarly in *Sim Kie Chon v. Superintendent of Pudu Prison & Ors.* [1985] CLJ (Rep) 293 per Abdul Hamid CJ, (Reference was also made to numerous other relevant cases).

[2] The principles enunciated in these cases point out to one unmistakable direction to be considered in an application of this nature, that is, whether the claim by the plaintiff is groundless by any reason of flaw or fault in law or whether it is untenable because the allegations contained in the statement of claim are so implausible and illogical as to disclose no cause of action.

[3] The original writ was issued in the name of "Datuk Seri Abdul Rahim Tamby Chik" and not against the "Chief Minister". The term "UMNO" was never used by the applicant in the original writ. Since there is no nexus in the original writ between Datuk Seri Abdul Rahim and the plaintiff, the plaintiff or any member of the Alai Branch of UMNO obviously cannot succeed in his or their claim.

[4] Even on the assumption that there is a sufficient nexus between the plaintiff and the applicant herein, the plaintiff nevertheless cannot maintain this libel suit against the applicant because defamation is a personal action maintainable by the person defamed and not by individuals who are remotely related to him.

[5] There is yet a further requirement which the plaintiff must, and in this case failed to prove, namely that the words were published about him. Even going on the hypothesis that the entire Alai UMNO members have been defamed, the plaintiff has yet no cause of action. An individual member of group which had been libelled cannot claim damages unless the words referring to the group also contained references on him as an individual (see *Knupper v. London Express Newspaper Ltd.* [1944] All ER Annotated Vol. 1 495).

[6] Defamation involves a right *in personam* and close relationship with the person defamed alone will not give rise to the right on the part of others to sue the defendant.

[7] The rules applicable in defamation proceedings must be strictly observed. Any attempt to avoid, temper or mitigate the application of this rule may lead to injudicious and irrational consequences. If every member of an association has the capacity to take defamation proceedings against those who defamed their leader, then there will be no end to tortious litigation in the Courts for persons with the remotest interest might be encouraged to strive for their chance at winning a share of other people's damages.

[8] Representative proceedings cannot be taken in defamation proceedings. In a defamation suit the ground of liability for damages must necessarily differ from one person to another. The view that representative action cannot lie where the sole relief sought is damages has been expressed in the case of *Markt & Co. Ltd. V. Knight Steamship Company Ltd.* [1910] 2 KB 1021 at 1040 per Fletcher Moulton LJ.

[9] For the aforesaid reasons the plaintiff/respondent has no cause of action against the defendant/applicant and the plaintiff's/ respondent's suit cannot be maintained.

[10] The defendant/applicant urged the Court to make an award of costs personally against the solicitor for the plaintiff under O. 59 r. 8. To succeed in such an application, the applicant must prove that the opposing solicitor has been guilty of serious dereliction of duty or gross negligence. In this case, failure by the plaintiff's solicitor to appreciate the intricacies of the defamation laws cannot be construed as an act of gross negligence or dereliction of his duties as a solicitor.

[Defendant's/applicant's application allowed. Suit against defendant/applicant struck out. Plaintiff/respondent to pay costs of this application.]

Cases referred to:

Drummond-Jackson v. BMA (CA) [1970] 1 WLR 693
Sim Kie Chon v. Superintendent of Pudu Prison & Ors. [1985] CLJ (Rep) 293
Golden Century Development Sdn. Bhd. & Anor. v. Gan Hoe & Anor. [1983] 1 MLJ 86
Attorney-General, Malaysia v. Chiow Thiam Guan [1983] CLJ (Rep) 462
Bruce v. Odhams Press Limited [1936] 1 KB 697
Knupper v. London Express Newspaper Ltd. [1944] 1 All ER 495
Daya v. Param Sukh [1888] ILR Vol XI Allahabad Series 10
Brahmanna v. Ramakrishnama [1894] ILR Madras 251
Luckumsey Rowji v. Hurbun Nursey & Ors. [1881] ILR Bom 580
Subbaiyar v. Kristnaiyar & Anor. [1878] ILR 383
Markt & Co. Ltd. v. Knight Steamship Company Limited [1910] 2 KB 1021
Mitra & Co. v. Thevar & Anor. [1960] 26 MLJ 79

Legislation referred to:
Rules of the High Court 1980, O. 18 r. 19

Other sources referred to:
Halsbury's Laws of England, 4th Edn., Vol. 28, p. 13
Defamation Ducan and Neill 2nd Edn.

For the plaintiff - Karam Singh Veriah
For the Karpal Singh (2nd defendant) - in person

JUDGMENT

Wan Yahya J:

The application stems from a somewhat lurid and intriguing episode. On 13 September 1983 the 2nd defendant, Mr. Karpal Singh, an advocate and solicitor of the High Court Malaya, filed on behalf of the 1st defendant, Josephine Doris Nunis a suit in this Court against Datuk Seri Abdul Rahim Tamby Chik, who was at the relevant time, and is currently, holding the office of the Chief Minister of Malacca.

It was alleged *inter alia* in that suit that the said Datuk Seri had befriended the 1st defendant who was then employed as a waitress in a local hotel and that he had showered gifts on her. The 1st defendant claimed that as a result of the asseveration of marriage made by this person she had on various occasions rendered him sexual favours at several named places in Malacca, Kuala Lumpur and Port Dickson. She claimed that she had given up her job as waitress at his request and that as a result of his subsequent unreasonable conduct in breaking off their association she had suffered mental anguish and humiliation. That suit which was registered in the High Court Registry as Civil Suit No. 297/85 shall be hereinafter referred to as the 'original writ'.

An account of this story, and in one particular case the entire allegations in the writ, appeared in the newspaper the following day. According to the plaintiff in the present case, the 2nd defendant had personally handed over unnumbered and unsealed copies of the writ to reporters who had in turn made copies of the writ and distributed them throughout the country. The plaintiff in the present suit (hereinafter referred to as the 'libel suit') said that he is a member of the United Malays National Organisation (UMNO). He claims that he is suing on behalf of himself and all the other members of the Alai Branch in the Kota Melaka UMNO Division and alleges that the 2nd defendant whom he described as a bitter and unscrupulous rival party member had distributed the writ containing the allegation of adultery and its subsequent publication in the newspapers with the motive or malicious intention of defaming the State Government and the UMNO. He went on to particularise the allegation of derogation as follows:

(A) The plaintiff and UMNO members and officials are embarrassed in the mosques by PAS members and by the public as supporters of an adulterer;

(B) UMNO Wanita avoids UMNO male members as a group of sex maniacs;

(C) UMNO male members are prevented from attending UMNO meeting by their wives for fear of involving themselves in sex orgies;

(D) UMNO male members are prevented by their wives from associating with the Honourable Chief Minister;

(E) The DAP and PAS are holding ceramahs all over the country and Melaka repeating the statements of the defendants saying that they pity UMNO members for being followers of an adulterer;

(F) If repetition of the defendants' defamatory statement UMNO members are now being told by the members of the Public that UMNO has fallen to a woman;

(G) The people of Kampong Morton, Melaka who were promised to have their area developed but due to the economic recession the Melaka State Government could not implement the programme and because the Portuguese Settlement has RM2,000,000 development already carried out for the Portuguese Cultural Centre, the ordinary Malays are abusing the UMNO members that the Portuguese Settlement has got the said development because of the Chief Minister's alleged adultery with the 1st defendant;

(H) The centre in Melaka of all this abuse and defamation of UMNO members is in Restaurant ANDA, Jalan Hang Tuah, Melaka their recitation is from the 2nd defendant un-numbered and unsealed said statement of claim; and

(I) At the last Maulud Nabi at Kubu Stadium Melaka because of the defendant's aforesaid false and defamatory statements UMNO members were jeered by the pious worshippers of ALLAH.

The plaintiff claims that the publication of the contents of this writ had jointly and severally depicted both UMNO members and the plaintiff as persons of immoral and un-Islamic principles and accordingly had brought them into hatred, ridicule, disrepute and public odium and contempt and subjected the plaintiff and UMNO members to low and lewd remarks from the public and members of opposition parties like the Democratic Action Party (DAP) and Party Islam Malaysia (PAS). The writ also went on at some lengths on the *mala fides* of Mr. Karpal Singh and his intention as a bitter rival opposition member in publicising this case. By and large these insinuations are not to the point for the purposes of this application. For many decades now our Courts have enduringly precluded political issues from inhibiting their judicial considerations. This Court does not propose to make any exception to this practice either. The remarks, so far as they are irrelevant to the present issue, shall be ignored.

The original writ, however, was designed for a transitory debut only in this case. Four days after it was filed, the 1st defendant filed a notice of discharge of her solicitor, Mr. Karpal Singh and of her intention to act in person. On 17 September 1985 she finally discontinued the action before service of the writ could be effected on Datuk Seri Abdul Rahim. The present application before this Court is to set aside the libel suit against Mr. Karpal Singh only, as service has not been effected on the 1st defendant.

The principle governing an application under O. 18 r. 19 has been succinctly set out by Lord Denning MR in the Court of Appeal Case of *Drummond-Jackson v. BMA (CA)* [1970] 1 WLR 693 as follows:

> The procedure of "striking out" is ready to hand. We have used it many times lately to decide preliminary issues. For instance, whether a barrister can be made liable for negligence in conducting a case in Court: *Rondel v. Worsley* [1969] 1 AC 191; whether the Inland Revenue Commissioners are bound to give a taxpayer the opportunity of seeing certain documents: *Wiseman v. Borneman* [1969] 3 WLR 706; whether students of scientology are entitled to remain in England: *Schmidt v. Home Office* [1969] 2 Ch. 149; and whether an action lies for maliciously applying for a bench warrant: *Roy v. Prior* [1970] 1 QB 283. All these issues

were decided on an application to strike out the statement of claim. They took days to argue, but in the end the proceedings were struck out. It became clear, after argument, that the facts alleged by the plaintiff did not give rise to a cause of action.

A similar principle is enunciated in our recent contentious case of *Sim Kie Chon v. Superintendent of Pudu Prison & Ors.* [1985] CLJ (Rep) 293 where Abdul Hamid CJ in delivering the judgment of the Court said:

The principle governing the striking out of pleadings is clear in that it is only in plain and obvious cases that recourse should be had to the summary process under O. 18 r. 19 of the Rules of the High Court 1980:

> the summary procedure under this Rule can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'.

(*Attorney-General of Duchy of Lancaster v. L& NW Railway Co.* [1892] Ch.274 (Supreme Court Practice 1985.)

Identical rules by our Courts are to be found in numerous cases. In *Golden Century Development Sdn. Bhd. & Anor. v. Gan Hoe & Anor.* [1983] 1 MLJ 86, Wan Suleiman FJ expressed the following:

We think it will suffice for us to refer to the well known authority *A.G. of Duchy of Lancaster v. L& NW Railway Co.* [1892] 3 Ch. 274 in which it was held that the summary procedure under the English rule which is identical to ours, can only be adopted when it can be clearly seen that a claim or answer is on the face of it "obviously unsustainable".

In *Attorney-General, Malaysia v. Chiow Thiam Guan* [1983] CLJ (Rep) 462, Hashim Yeop A. Sani J (as he then was) expressed his finding in this suit as follows:

The law to be applied is elementary and has been set out in a number of cases-see *Low Yat v. G.C. Grace* [1947] MLJ 115 and *Mooney & Ors v. Peat, Marwick, Mitchell & Co. & Anor.* [1967] 1 MLJ 87. The principle which seems to have been established is that the statement of claim should be struck out only in plain and obvious cases where the Judge can say at once that the statement of claim as it stands is insufficient even if proved to entitle the plaintiff to the relief. It follows that so long as the statement of claim discloses some ground of action the mere fact that the plaintiff is not likely to succeed is no ground to strike out the statement of claim.

The principles enunciated in these cases point out to one unmistakable direction to be considered in an application of this nature i.e. whether the claim by the plaintiff is groundless by any reason of flaw or fault in law or whether it is untenable because the allegations contained in the statement of claim are so implausable and illogical as to disclose no cause of action. With the relativity of these judgments fresh in my mind I shall proceed to consider the application.

Mr. Karpal Singh's contention in the present application is that the plaintiff's case is unsustainable on grounds of misappreciation of facts of the original writ, *locus standi* and capacity to sue in defamation action. On the first point raised, it is obvious from the statement of claim in the libel suit that the allegation of defamation is founded on the imputation of libel on the part of the defendants on Datuk Seri Abdul Rahim Tamby Chik as Chief Minister of Malacca and not as an individual person. In fact paras. 5(B), 6, 9, 10(A), 10(B), 10(C), 10(E), 11, 12 and 13 make express mention of the term "Chief Minister". Similarly the claim by the plaintiff in the libel suit is also founded on the ground of the Chief Minister being the UMNO State Chief. The rationale behind the plaintiff's libel action has been spelt out in paras. 12 and 14 of the statement of claim which read as follows:

> 12. The said Chief Minister controls the State Legislative Assembly of Melaka and directs or leads the Legislative of Melaka to make legal provisions for regulating the Muslim Religious Affairs and in constituting a Council to advise the Yang di-Pertuan Agong in matters relating to the Muslim Religion and for the defendants to defame the said Chief Minister who is the adviser of the Yang di-Pertuan Agong in matters of the Muslim religion in Melaka has hurt and dismoralised the Muslims of Melaka among whose numbers are UMNO Members and lowered the great Religion of Islam as being run by one who should in Islamic law be stoned and whose party members as accomplices along and after the fact should also be stoned.
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> 13. ...
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> 14. The 2nd defendant is a politician of the Democratic Action Party being a Vice-Chairman and Legal Adviser hereof a bitter and unscrupulous rival Party to UMNO brought the said Suit and maliciously published the said paper to the people of Malaya to defame the Melaka State Government and UMNO with the purpose of turning the Malays who are staunch Muslims against and destroying UMNO and overturning the Melaka State Government by defamation.

It is clear from the statement of claim in the libel suit that the nexus for tortious liability between the plaintiff and the applicant herein is founded on the libellous words published on the Chief Minister of Malacca and the UMNO State Chief. This, of course, is an erroneous assumption. The original writ was issued in the name of 'Datuk Seri Abdul Rahim Tamby Chik' and not against the 'Chief Minister'. The term 'Chief Minister' appeared only on a single occasion in para. 2 of the statement of claim in the original writ and it was used there merely to describe the identity or occupation on the person sued. The term 'UMNO' was never used by the applicant in that suit at all. Since there is no nexus in the original writ between Datuk Seri Abdul Rahim and the plaintiff, Atip Bin Ali or any member of the Alai Branch of UMNO, obviously cannot succeed in his or their claim.

Even on the assumption that there exists sufficient nexus between the plaintiff and the applicant herein, the plaintiff nevertheless cannot maintain this libel suit against the applicant. Defamation is a personal action maintainable by the person defamed and not by individuals who are remotely related to him. According to *Halsbury's Laws of England* 4th Edn. Vol. 28 p. 13,

> Plaintiff must be personally defamed. The proper purpose of an action of libel or slander is to vindicate the reputation of the person defamed, and accordingly the proper and only party to bring the action is the person actually and personally defamed. [1944] AC 116, [1944] 1 All ER 495, HL. Thus, it is not enough that the words reflect on the plaintiff's property, there must also be an imputation against the plaintiff personally, for example, that he has knowingly sold defective goods. See para 42, post.

There is yet a further requirement which the plaintiff must, and in this case failed to prove namely the words were published about him. Mr. Karpal Singh quoted from Duncan and Neill on *Defamation* 2nd Edn., the following words of A.L.Smith MR in *Sadgrove v. Hole* appearing on p. 22:

> The plaintiff to succeed in the action must prove a publication of and concerning him of libellous matter, and if he does not satisfy the onus of proof which is on him in this respect there is no cause of action.

He next cited *Bruce v. Odhams Press Limited* [1936] 1 KB 697 in which it was held that the material facts on which a plaintiff must rely in a libel action necessarily included the facts and matters from which it was to be inferred that the words were published of the plaintiff. I am fully with Mr. Karpal Singh on these authorities. Even going on the hypothesis that

the entire Alai UMNO members have been defamed the plaintiff has yet no cause of action. An individual member of group which had been libelled cannot claim damages unless the words referring to the group also contained references on him as an individual. In *Knupper v. London Express Newspaper Ltd.* [1944] 1 All ER 495, the House of Lords expressed the following opinion:

> The respondents published an article in a newspaper from a correspondent abroad adversely commenting on the activities of an association of certain Russian political refugees called Mlado Russ or Young Russia in terms which, it was admitted, would have been defamatory if written of a named individual. The association had a very large membership in other countries but that of the branch in the United Kingdom was only some 24 members. The appellant who resided in London was the active head of the United Kingdom branch of the association and it was contended that the article reflected attack on the general character and activities of the association and not on the appellant. There was in fact no reference in the article to the appellant nor to the branch of the association in the United Kingdom. It was held when defamatory words are written or spoken of a class of persons it is not open to a member of that class to say that the words were spoken of him unless there was something to show that the words about the class refer to him as an individual. In this case, there was nothing to show that the words referred to the appellant as an individual and his claim, therefore, failed.

In this progressive and democratic society in which we live, it is preposterous to presume that our public is so petty minded, puritanical and sanctimonious as to stigmatise all members of an association for a simple impious or facinorous act committed by their leader. When such mentality comes to pass, then politics and free election should not remain as our philosophy of life as no leader can appear spotless in the eyes of his political adversaries.

The claim of breach of promise of marriage was instituted by Josephine Doris Nunis and the alleged defamatory publication was by her solicitor, Mr. Karpal Singh. If there was anybody defamed at all by this alleged publication that person is Datuk Seri Abdul Rahim Tamby Chik and certainly not any member of the UMNO Alai Branch individually or collectively. It is open to Datuk Seri Abdul Rahim, if he is so disposed, to sue the plaintiff or her solicitor in the original writ. His right is exclusive and cannot be taken over by others whose rights are too remote. Defamation involves a right *in personam* and close relationship with the person defamed alone will not give rise to the right on the part of other persons to sue the defendant. In *Daya v. Param Sukh,* [1888] ILR Vol XI Allahabad Series 104 Edge CJ opined as follows:

> In my opinion, an action for defamation can only be brought by the person actually defamed; if the person is *sui juris,* and if the person is not *sui juris,* then under the provision of the Code of Civil Procedure by the guardian or next friend. If any relative, who suffered pain of mind by reason of defamatory language uttered as to another relative could maintain an action of defamation, the defamer might be liable to as many actions as there were members of the family of the person defamed. It was held by the Madras High Court in the case of *Subbaiyar v. Kristnaiyar* ILR 1 Mad. 383, that a brother could not maintain an action for the defamation of his sister. I think that is a right decision. It was held by the Bombay High Court in *Luckumsey v. Hurbun Nursey,* ILR 5 Bom 580 that the heir and the nearest relative of a deceased person could not maintain a suit for defamatory words spoken of such deceased person although they were alleged to have caused damage to the plaintiff as a member of the same family. These two cases show, as I have always understood the law to be that an action for damages is a purely personal action which can only be maintained by or on behalf of the person defamed. The same principle was applied, although not in an action for defamation, by this Court in *Oodai v. Bhowanee Pershad* ILR 10 All. 425. I am of opinion that so far as this suit is one to recover damages for the defamation of the defendant's daughter, it cannot be maintained.

Similar opinion was also expressed in the case of *Brahmanna v. Ramakrishnama* [1894] ILR Madras at p. 251 by Muttusami Ayyar J:

> I do not think that there is a case in which we should depart from the rule that it is the person who is slandered that ought to sue. The plaintiff's wife is *sui juris* and she may sue for the slander. No other person is permitted to sue, because however closely he may be related to the person slandered and whatever pain of mind he may suffer from the slander of his relation, the injury caused to him is mediate or remote and not immediate or proximate. If the rule were otherwise, the defamer might be liable for as many actions as there are near relations of the person defamed.

There are also other cases as *Luckumsey Rowji v. Hurbun Nursey & Ors.* [1881] ILR Bom. 580 where the suit brought by the heir and nearest relation of deceased for defamatory words, spoken of deceased person and alleged to have caused damage to the plaintiff as a member of his family, was held to be not maintainable. Likewise, in *Subbaiyar v. Kristnaiyar & Anor*. [1878] ILR 383 the plaintiff's suit against the defendant for slander of his sister was dismissed.

In my view, the rules applicable in defamation proceedings must be strictly observed. Any attempt to avoid, temper or mitigate the application of this rule may lead to injudicious and irrational consequences. If every member of an association has the capacity to take defamation proceeding against those who defamed their leader, then there will be no end to tortious litigation in our Courts for persons with the remotest interest might be encouraged to strive for their chance at winning a share of other people's damages.

Lastly, I am of the view that representative proceedings cannot be taken in defamation proceedings. No representative action is normally allowed to establish the right of numerous persons to recover damages as the sole relief claimed. In a defamation suit the ground of liability for damages must necessarily differ from one person to another. In this liable suit not every member of the Alai UMNO Branch was present when the words were uttered and likewise the same remarks were not used on each of the members on every occasion. These remarks, as could be seen in the statement of claim, were allegedly uttered in different places i.e. mosque, restaurants and ceramahs and at different times. It is too much to expect this Court to accept that every member of the Alai UMNO Branch was present and had suffered degradation of identical magnitude and at the same time and place.

The view that representative action cannot lie where the sole relief sought is damages has been expressed in the case of *Markt & Co. Ltd. v. Knight Steamship Company Limited* [1910] 2 KB 1021 by Fletcher Moulton LJ as follows:

> But the writs even as proposed to be amended fail to comply with Lord Macnaghten's interpretation of the rule in another and most essential particular. The relief sought is damages. Damages are personal only. To my mind no representative action can lie where the sole relief sought is damages, because they have to be proved separately in the case of each plaintiff, and therefore the possibility of representation ceases. It is true that in *Duke of Bedford v. Ellis* [1901] AC 1 there was the claim for damages but that was only a personal claim by the named plaintiffs, and it was solely on that ground that the action was held to be well framed so far as damages were concerned. The claims here are necessarily claims for damages only, and therefore no representative action can be brought. To hold that a representative action can be brought in a case where the causes are mere independent actions for damages arising out of one and the same set of circumstances would be to confound r. 1 with r. 9, and, as I have said, the language of these two rules shows that they are intended to have wholly different applications.

For the aforesaid reasons, I find that the plaintiff/respondent has no cause of action against the defendant/applicant and that his suit is conspicuously unmaintainable.

Finally, Mr. Karpal Singh urged this Court to make an award of costs personally against Mr. Karam Singh, the solicitor for the plaintiff/respondent under O. 59 r. 8 for instituting this obviously unsustainable case and for the latter's rancorous remarks in the statement of claim against Mr. Karpal Singh's political motives. In *Mitra & Co. v. Thevar & Anor*. [1960] 26 MLJ 79 it was held that mere failure in litigation does not justify an award under this Order to be made against the unsuccessful solicitor. To succeed in such an application, the applicant must prove that the opposing solicitor has been guilty of serious dereliction of duty or gross negligence. In this case failure by the plaintiff/ respondent's solicitor to appreciate the intricacies of the defamation laws cannot be construed as an act of gross negligence or something that amounts to dereliction of his duties as a solicitor. If at all Mr. Karam Singh erred in this case the mistake lies in his indiscreet and forcible ventilation of his client's unwarranted political imputation against Mr. Karpal Singh.

The application by Mr. Karpal Singh is allowed. The claim against him is hereby struck out. The plaintiff/respondent shall pay the costs of this application.

Also found at [1986] 1 CLJ 320